

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	09/597,840	QIU ET AL.	
	Examiner	Art Unit	
	Anne R. Kubelik	1638	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 2/24/05.
2. ☒ The allowed claim(s) is/are 52-59.
3. ☒ The drawings filed on 01 October 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                         |
|   | 9. <input type="checkbox"/> Other _____.  |

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*Examiner's Amendment*

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Andrew K. Gonsalves on 15 March 2005.

IN THE CLAIMS:

Claim 52. (currently amended) A method of enhancing growth in plants compared to untransformed plants or plant seeds, wherein the method comprises ~~comprising~~:

~~providing a transgenic plant or plant seed transformed with a transgene comprising a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein comprising the amino acid sequence of SEQ ID NO:1, SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:7, residues 1-98 of SEQ ID NO:3, or residues 137-204 of SEQ ID NO:3; and~~

~~growing the a transgenic plant or a transgenic plant produced from the a transgenic plant seed under conditions effective to enhance plant growth, wherein the transgenic plant or plant seed is transformed with a transgene comprising a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein comprising SEQ ID NO:1, SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:7, residues 1-98 of SEQ ID NO:3, or residues 137-204 of SEQ ID NO:3.~~

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Claim 54. (currently amended) A method according to claim 52, wherein the plant is ~~selected from the group consisting of dicots and monocots~~ a dicot or a monocot.

In claims 57 and 58, line 2, "provided" was replaced with --grown--.

IN THE TITLE:

USE OF A NUCLEIC ACID ENCODING A HYPERSENSITIVE RESPONSE  
ELICITOR POLYPEPTIDE TO ENHANCE ~~ENHANCEMENT OF~~ GROWTH IN PLANTS

IN THE ABSTRACT:

The present invention relates to a method of enhancing growth in plants. ~~This involves applying a hypersensitive response elicitor polypeptide or protein in a non-infectious form to a plant or plant seed under conditions effective to enhance growth of the plant or plants produced from the plant seed.~~ Alternatively, transgenic Transgenic plants or transgenic plant seeds transformed with a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein are grown ~~can be provided and~~, optionally, the transgenic plants or plants resulting from the transgenic plant seeds ~~are grown under conditions effective to enhance plant growth~~ further have the hypersensitive response elicitor polypeptide or protein applied to them.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (571) 272-0804. The central fax number for official correspondence is (571) 273-8300.

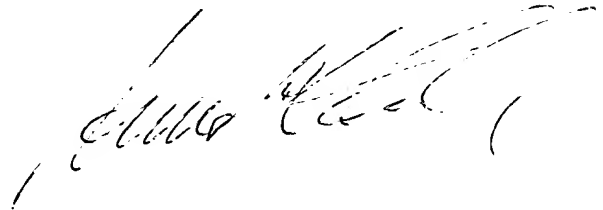
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

Anne R. Kubelik, Ph.D.  
March 15, 2005

A handwritten signature in black ink, appearing to read 'Anne R. Kubelik', is written over a horizontal line.

**ANNE KUBELIK, PH.D.  
PRIMARY EXAMINER**